Brief of Stockslager for D.

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Supreme Court of the United States.

October Term, A. D. 1897.

Term No. 73.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, *Plaintiff in Error*,

vs.

PATRICK L. SLOAN, *Defendant in Error*.

In Error to the Supreme Court of Iowa.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

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Attorneys for Defendant in Error.

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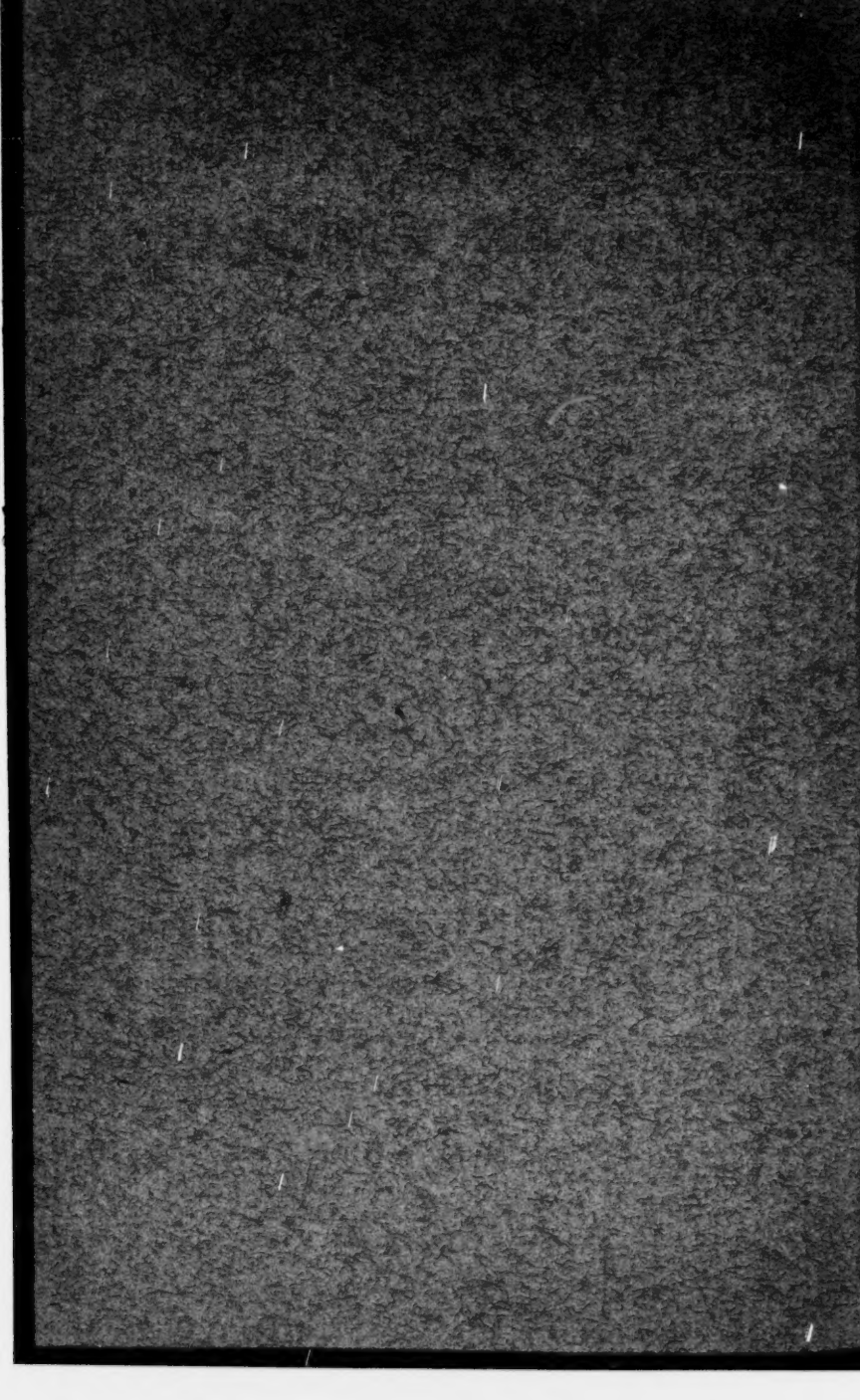

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STATEMENT.

The question raised by the appeal of the Defendant Railway Company is whether Section 1308 of the Code of Iowa is in conflict with the Constitution of the United States and the legislation of Congress regulating interstate commerce.

The Section of the Iowa Code referred to, is as follows:

> "No contract, receipt, rule or regulation, shall exempt any corporation engaged in transporting persons or property by railway from liability of a common carrier, or carrier of passengers which would exist had no contract, receipt, rule, or regulation been made or entered into."

(See Record, p.31.)

The plaintiff below, Patrick L. Sloan, brought his action in the Sioux County District Court, Iowa, against the Defendant Railway Company, charging that he was injured through the negligent running and management of its train and road upon which he was a passenger for hire.

The Defendant Company pleaded in defense the provisions of the contract under which plaintiff was at the time of his injury riding upon and caring for stock shipped upon one of Defendant's freight trains.

The part of said contract specially relied on by the company is found on page 4 of the Record, and is as follows:

> "Eighth. That the company shall in no event be liable to the owner or person in charge of said stock for any injury to his person in any amount exceeding the sum of $500."

The decision of the Supreme Court of Iowa, from which this appeal was taken, sustained the judgment below in favor of plaintiff in the sum of $1,000, holding against the contention of the company, that while the stock shipment was an interstate shipment, yet section 1308 of the Iowa code, *supra*, as applied to this contract, is not in any sense a regulation of commerce. The court say:

> "In our opinion, neither the common law rule nor the statute to which we have referred is, as applied to this contract, in any proper sense an attempt to regulate commerce."

In support of this interpretation the court cite, Hart *vs.* The. C. & N. W. Ry. Co., 69 Iowa, 486; Ross *vs.* D. V. R. Co., 39 Iowa, 247.

Munn *vs.* Ills., 94 U. S., 113; Chicago, B. & Q. Ry. Co. *vs.* Iowa, *Ib.*, 155; Peik *vs.* Chicago & N. W. Ry. Co., *Ib.*, 164, are also relied on to sustain this view.

ARGUMENT.

In Sherlock *et al. vs.* Alling, Admr., 93 U. S. 99, action was brought against defendants, owners of colliding steamboats running on the Ohio River, engaged in interstate commerce, by the administrator of Sappington, who it was alleged was killed through the negligence of servants of plaintiffs in error in control of said boats.

Suit was based on a statute of the State of Indiana authorizing the recovery of damages by the personal representative of a person wrongfully killed by another.

The chief defense urged was:

> "At the time of the alleged injuries the colliding boats were engaged in carrying on interstate commerce under the laws of the United States, and the defendants, as their owners, were not liable for injuries occurring in their navigation through the carelessness of their officers, except as prescribed by those laws; and that these did not cover the liability asserted by the plaintiff under the statute of Indiana."

In an elaborate discussion of the point by Mr. Justice Field, who delivered the opinion of the Court, it is held:

> "In conferring upon Congress the regulation of commerce, it was never intended to cut the State off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation in a great variety of ways may affect commerce and persons engaged in it, without constituting a regulation of it, within the meaning of the Constitution."

The Court, in further discussion, stated:

> "It may be said, generally, that the legislation of a State not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting

the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce foreign or interstate, or in any other pursuit. In our judgment, the statute of Indiana falls under this class.

"Until Congress, therefore, makes some regulation touching the liability of parties for marine torts resulting in the death of the persons injured, we are of opinion that the Statute of Indiana applies, giving a right of action in such cases to the personal representatives of the deceased, and that, as thus applied, it constitutes no encroachment upon the commercial power of Congress."

(Citing U. S. *vs.* Bevans, 3 Wheat., 337.)

This doctrine is cited and approved in N. C. & St. L. Ry. Co. *vs.* State of Ala., 128 U. S., 96.

Now, it would seem to follow as a legal conclusion that if, as held by the Supreme Court in Sherlock *et al. vs.* Alling, the Statute of Indiana creating a statutory liability for damages against an interstate carrier for causing the death of a citizen of that State where such liability did not exist at common law, was not an interference with exclusive Congressional control of interstate commerce, on the ground that the State had the right to legislate for the protection of the health and safety of her citizens, though such legislation might involve persons engaged in such commerce; likewise section 1308 of the Iowa Code intended to prevent such carriers from limiting their liability for negligently injuring citizens of that State, must be upheld as not in contravention of the Constitution giving Congress exclusive control of interstate commerce.

As against the reasoning of the Supreme Court in Sherlock *vs.* Alling, *supra*, holding the Indiana Statute creating a liability against interstate carriers, was no infringement of the commercial power of Congress, it will be noted that

counsel for the Defendant Railway Company cite numerous decisions of this Court on questions admittedly within the exclusive power of Congress, and are expressly so classed by this Court in the Sherlock case.

The Court say:

> "Whatever, therefore, Congress determines, either as to a regulation or the liability for its infringement, is exclusive of State authority. But with reference to a great variety of matters touching the rights and liabilities of persons engaged in commerce, either as owners or navigators of vessels, the laws of Congress are silent and the laws of the State govern."

But the Court, as quoted in another part of this brief, distinctly holds that the legislation of a State, not directed against commerce or any of its regulations, but relating to the *rights duties, and liabilities of citizens*, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction.

We contend, therefore, that counsel for the company have cited no authority wherein it is held that the legislature of a State cannot legally enact laws for the protection of the lives and property of its citizens where the laws of Congress are silent, although its enforcement may involve claims for damages against carriers of interstate commerce.

If, then, section 1308 of the Iowa code under consideration was legal and not in contravention of the power of Congress over commerce, the case of Hart *vs.* Penna. R. R. Co., 112 U. S., 331, relied on by counsel is not in point, because, as stated by the Supreme Court of Iowa in the decision appealed from, there was no like statute in that case, but the contract sued on was governed by the common law liability of common carriers. The Court also clearly distinguishes the Hart case

from the case at bar, in that in the Hart case the stipulated liability for damages was based upon an agreed valuation of the stock injured or killed, but in the case at bar the contract insisted on did not pretend to stipulate the value of the life or limb of Defendant in Error, upon which valuation the limit of liability was based.

So, we think, the Hart case is not in point against the judgment of the Supreme Court of Iowa sustaining the judgment below, awarding damages in excess of the amount specified in the contract relied on by the Plaintiff in Error.

As to the general liability of a common carrier for damages for injury to a passenger in charge of stock, notwithstanding a contract limiting such liability, see—

N. Y. C. R. R. Co. *vs.* Lockwood, 84 U. S., 357;
Liverpool, &c., Steamboat Co. *vs.* Phœnix Ins. Co., 129 U. S., 397;
Express Co. *vs.* Caldwell, 21 Wall., 264;
Ry. Co. *vs.* Pratt, 22 Wall., 123;
Bank *vs.* Express Co., 93 U. S., 174;
Ry. Co. *vs.* Stephens, 95 U. S., 655;
Hart *vs.* Ry. Co., 112 U. S., 331;
Ins. Co. *vs.* Transportation Co., 117 U. S., 312;
Inman *vs.* Ry. Co., 129 U. S., 125.

We ask that the judgment of the Supreme Court of Iowa be affirmed.

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Atty's for Defendant in Error.